



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: HoseCo, Inc.

File: B-227439

Date: August 20, 1987

### DIGEST

1. Protest is sustained against award under request for proposal calling for a specific brand name part or acceptable alternate where agency admittedly incorrectly concluded that protester's alternate offer was technically unacceptable and record supports agency's reversal of its initial determination that alternate offer was unacceptable.

2. Where the General Accounting Office (GAO) has no basis to question contracting agency's finding that it is not feasible to terminate an existing contract for the convenience of the government and make award to the protester, protester that was unreasonably excluded from the competition is entitled to its costs of filing and pursuing the protest and its proposal preparation costs.

### DECISION

HoseCo, Inc. protests award of a contract to Mindeco Corp. under request for proposal (RFP) No. DLA700-87-R-1001, issued by the Defense Construction Supply Center (DCSC), Columbus, Ohio for 1,060 flange-to-house adapters with an option to purchase additional quantities. HoseCo contends that DCSC improperly rejected its lower-priced alternate product as technically unacceptable.

We sustain the protest.

The RFP listed a specific manufacturer's part number as the only approved item as of the date of the solicitation. Offerors were, however, permitted to submit alternate products pursuant to the "Products Offered" clause. This clause required offerors of alternate products to furnish drawings, specifications, or other data to enable the government to determine the acceptability of the product and further warned offerors that the failure to furnish sufficient information could preclude consideration of their offers.

There were four firms submitting timely offers at closing on March 9, 1987. HoseCo, offering its own alternate part, was

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low offeror at \$49.30 each unit. Mindeco, offering the already approved part, was second low offeror at \$49.60 each unit. DCSC concluded that HoseCo's accompanying materials failed to establish the acceptability of HoseCo's product and Mindeco was awarded the contract on May 29, 1987. HoseCo filed its protest with our Office on June 10, 1987. As a result of its own review, prompted by this protest, DCSC determined that its finding that HoseCo's offer was technically unacceptable was erroneous.

HoseCo's bid was found technically unacceptable because its offered adapter did not meet the requirement for overall length and also because HoseCo's drawing did not indicate required depth and number of serrations per inch. In response to HoseCo's protest, DCSC evaluators reexamined the basis for rejection of HoseCo's alternate product. DCSC now reports that the military standard (milstd) for the item does not provide that overall length or depth and number of serrations per inch are "critical, major or minor" defects. Also, HoseCo proposed to manufacture to this milstd and it specified the depth and number of serrations. Thus, DCSC reports that HoseCo's product was acceptable and was improperly rejected. Based on this record, we conclude that the protester was excluded unreasonably from the competition and sustain the protest.

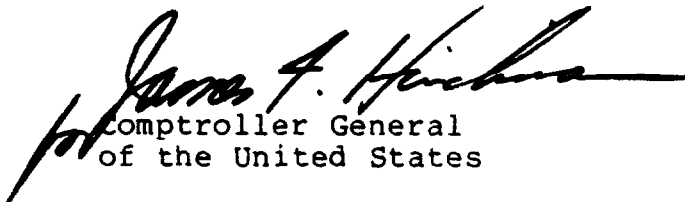
HoseCo's protest was properly filed with this Office no later than 10 working days after basis for the protest was known; DCSC was promptly notified. See 4 C.F.R. §§ 21.0(b) & 21.2(a)(2) (1987). However, because the protest was filed more than 10 calendar days after the award, DCSC did not order work stopped on the contract when notified of the protest. See 31 U.S.C. § 3553 (Supp. III 1985). DCSC issued a stop work order on June 25, when it discovered its error in evaluating HoseCo's offer. The agency reports that substantial work has been accomplished by Mindeco in fulfilling its obligations under the contract. DCSC has verified a claim by Mindeco that termination for convenience costs would exceed \$22,000, which is almost 50 percent of the contract price.

In determining the appropriate corrective action on an improperly awarded contract when the agency is not required to suspend performance, we consider all the circumstances surrounding the procurement, such as the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the costs to the government, the

urgency of the procurement, and the impact of the recommendation of the contracting agency's mission. 4 C.F.R. § 21.6(b). Leland Limited, Inc.--Reconsideration, B-224175.2, Feb. 17, 1987, 87-1 CPD ¶ 168. In this case there is no evidence that the procurement deficiency was caused by an absence of good faith or is more than an isolated error of judgment. In similar situations, we have found the advanced stage of the procurement and high termination costs--we have no basis to question DCSC's determination of such probable costs--support a finding that termination is not feasible. Id.; NI Industries, Inc.--Reconsideration, B-218019.2, Aug. 8, 1985, 85-2 CPD ¶ 145. Considering the facts and circumstances surrounding this procurement, a recommendation that the contract be terminated is not appropriate. We, nonetheless, recommend that, as the agency intends, it forego its option to make additional purchases from Mindeco. 4 C.F.R. § 21.6(a)(1); see Penn, Ferrara, Adler & Eichel, B-224224, Feb. 9, 1987, 87-1 CPD ¶ 134.

We also conclude that HoseCo is entitled to its reasonable proposal preparation costs and its costs of pursuing the protest. 4 C.F.R. § 21.6. Protesters are entitled to the reasonable cost of filing and pursuing a protest, including attorney's fees, where the contracting agency unreasonably excluded them from a procurement and we do not recommend that the protester be awarded the contract. 4 C.F.R. § 21.6. Additionally, where other remedies specified at 4 C.F.R. § 21.6(a)(2)-(5) are not appropriate, protesters are allowed recovery of reasonable bid and proposal preparation costs. 4 C.F.R. § 21.6(d)-(e). Since these respective conditions are met here, we declare the protester entitled to these costs. See, e.g., The Department of Navy, et al.--Request for Reconsideration, B-220327.2, et al., Apr. 23, 1986, 86-1 CPD ¶ 395.

HoseCo should submit a claim to DCSC to be reimbursed for its protest and bid preparation costs, and the protester and procuring agency should attempt to reach agreement on the amount due. If they cannot do so in a reasonable time, our Office will determine the amount. 4 C.F.R. § 21.6(f).

  
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